No. 97-1855

FILED
JUN 17 1998
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

October Term, 1997

CLAUDE V. ROUTH,

Petitioner,

v.

STATE OF WYOMING, *ex rel.*, WYOMING WORKERS' COMPENSATION DIVISION,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Wyoming

BRIEF IN OPPOSITION

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16 pp

QUESTIONS PRESENTED

The Wyoming Supreme Court stated five separate state law grounds for refusing to enforce the Mississippi judgment against Wyoming's state workers' compensation fund.

1. Was any one of the state law grounds sufficient?

2. If not, was the Mississippi judgment entitled to full faith and credit in Wyoming?

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STATEMENT OF THE CASE

The State of Wyoming operates an exclusive workers' compensation program through its Department of Employment, Workers' Compensation Division ("the Division"). The program is established by the Wyoming Worker's Compensation Act, Wyo. Stat. § 27-14-101, *et seq.* (1997), pursuant to specific authorization in the Wyoming Constitution, Art. 10, § 4.

Project Construction Corporation ("PCC") was a Delaware Corporation registered to do business in the State of Wyoming. As required by the Wyoming Workers' Compensation Act, PCC obtained worker's compensation coverage for its employees through the Division.

In 1985, PCC hired Petitioner Claude V. Routh ("Routh"). The hiring was done in Wyoming, for work to be performed in Wyoming. On November 18, 1985, while living in Wyoming and working in Wyoming, Routh was injured in the course of his employment when he fell off a ladder. He filed a worker's compensation claim with the Division, and the claim was allowed.

Under the Wyoming Worker's Compensation Act, injured workers are free to choose their own health-care providers. The Division paid Routh's Wyoming health care providers and paid his claims for temporary total disability benefits. Routh moved from Wyoming to Mississippi and changed health care providers. Both Routh and his Mississippi health care providers continued to submit their benefit claims to the Division. The Division continued to pay pursuant to its statute, procedures and fee schedules, as it does for all injured workers who move from the state.

According to medical reports from Routh's health care providers, it appeared that he had reached maximum medical improvement by early 1988. The Division informed Routh and his Mississippi attorney that a permanent disability award would require a disability rating using the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. When Routh's Mississippi health care providers refused to provide such a rating, the Division arranged for an examination in Wyoming. The Division paid for Routh's transportation to Wyoming in July, 1988. The examining physician questioned Routh's credibility, but he found a 4% permanent impairment. The Division forwarded a copy of the physician's report to Routh's Mississippi attorney on August 8, 1988.

On September 2, 1988, Routh's attorney notified the Division by letter that Routh's condition was still being evaluated in Mississippi and instructed the Division to do nothing further with respect to any claim for, or settlement of, Routh's permanent disability benefits. Routh never filed a formal application for disability benefits. He also did not exercise his right to a hearing, even though he had a right to a paid attorney for a hearing and any appeals. The Division stopped processing the permanent disability benefits.

On February 21, 1990, Routh instead filed a complaint against the Division in Mississippi state court, seeking workers' compensation permanent total disability benefits, damages for emotional distress, and punitive damages. Default was entered against the Division on April 3, 1990. On August 19, 1992, the Mississippi court

entered a default judgment against the Division, awarding $923,400.50 in actual damages and $1,000,000 in punitive damages.

Routh states that "[w]hen he sought [permanent disability] benefits, the WWCD ignored him and took no action on his claim." Pet. at 2. This is a substantial misrepresentation.

REASONS TO DENY THE WRIT

I. The decision of the Supreme Court of Wyoming is clearly supported by numerous and adequate non-federal grounds.

This Court refrains from exercising certiorari jurisdiction when the decision of the state court rests upon adequate non-federal grounds. *See Arizona v. Evans*, 115 S.Ct. 1185, 1189-90 (1995). In this case, the Wyoming Supreme Court expressly based its decision upon at least five state law grounds.

A. The Mississippi action was barred by the "exclusive jurisdiction" provision of the Wyoming Worker's Compensation Act.

The Wyoming Worker's Compensation Act is an exclusive state fund with an administrative claims determination process. In the case of permanent disability, a claimant has an absolute right to a second impairment rating, Wyo. Stat. § 27-14-405(e) (1987), to a hearing before an independent hearing examiner and to an appointed attorney, Wyo. Stat. § 27-14-601(c), (d) (1987).

The hearing examiner has "exclusive jurisdiction to make the final administrative determination of the validity and amount of compensation payable [to the claimant]." Wyo. Stat. § 27-14-602(c) (1987). The district courts of the state have no authority to afford affirmative relief but are limited to review of administrative determinations for compensation as provided in the Wyoming Administrative Procedure Act. *State ex rel. Wyo. Workers' Comp. Div. v. Hollister*, 794 P.2d 886 (Wyo. 1990).

The Mississippi court acknowledged that it must apply Wyoming workers' compensation law to Routh's complaint. Since a Wyoming court would have no jurisdiction to entertain a direct action against the Division by a plaintiff who abandoned his administrative claim, the Mississippi court did not have subject matter jurisdiction over Routh's claims arising from the Wyoming Workers' Compensation Act.[1]

Mississippi courts consistently refuse to become involved in other states' administrative workers' compensation programs. *L.&A. Constr. Co. v. McChasen*, 198 So.2d 240 (Miss. 1967); *Bethlehem Steel v. Payne*, 183 So.2d 912 (Miss. 1966). Nor will they assume subject matter jurisdiction against an out-of-state compensation carrier when the law of the state in which the claim arose does

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[1] While this Court may address jurisdictional issues pursuant to its certiorari jurisdiction, the petition does not raise any jurisdictional issues aside from the full faith and credit claim. Pet. at i. Therefore no jurisdictional issues are properly before the Court. *See Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 114 S.Ct. 425, 427 n.5 (1993) (per curiam) (citing Rule 14.1(a)). Likewise, the Petition does not present any choice of law question.

not permit such an action. *Overstreet v. Liberty Mutual Ins. Co.*, 263 So.2d 528 (Miss. 1972). *See also Dial v. Hartford Acc. & Indem. Co.*, 863 F.2d 15 (5th Cir. 1989) (affirming dismissal of tort claim against compensation carrier because administrative claim still pending).

The Wyoming Supreme Court held that the exclusive jurisdiction provision of the Workers' Compensation Act would preclude a tort action in Wyoming or Mississippi, stating "**under the correct application of Wyoming law**, [ ] the Mississippi court . . . did not have subject matter jurisdiction over Routh's claim for benefits[.]" Pet. at App. 14 (emphasis added).

B. The Mississippi long-arm statute did not authorize service on the State of Wyoming.

A plaintiff seeking to hale an out-of-state defendant into state court must meet a threshold test. The defendant must be both served with process and amenable to suit under the forum state's long-arm statute. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Invalid service voids all further proceedings against the defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

Routh attempted to serve the Division pursuant to the Mississippi long-arm statute:

> Any nonresident **person, firm, general or limited partnership, or any foreign or other corporation** not qualified under the constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in

> part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi. Such act or acts shall be deemed equivalent to the appointment by such nonresident of the secretary of state of the State of Mississippi, or his successor or successors in office, to be the true and lawful attorney or agent of such nonresident upon whom all lawful process may be served in any actions or proceedings accrued or accruing from such act or acts, or arising from or growing out of such contract or tort, or as an incident thereto, by any such nonresident or his, their, or its agent, servant or employee.

Miss. Code Ann. § 13-3-57 (1980) (emphasis added). *See Sorrell v. R & R Custom Coach Works, Inc.*, 636 So.2d 668, 671 (Miss. 1994) (applying Mississippi long-arm statute). The long-arm statute is to be interpreted according to its plain language. *Chandler v. City of Jackson Civil Serv. Comm'n*, 687 So.2d 142, 144 (Miss. 1997); *State Tax Comm'n v. Earnest*, 627 So.2d 313, 320 (Miss. 1993). The Division is an agency of the State of Wyoming, established by statute, Wyo. Stat. § 9-2-2002, not a "person, firm, general or limited partnership, or any foreign or other corporation[.]" Since the State of Mississippi does not purport to assert jurisdiction through its long-arm statute over another sovereign state, the court in Mississippi did not obtain personal jurisdiction over the Division.

The Wyoming Supreme Court carefully analyzed the Mississippi long-arm statute and held "the Mississippi statute permitting service upon nonresident defendants

does not . . . authorize[ ] service upon the State of Wyoming." Pet. at App. 11.

C. Under the law of Wyoming Routh failed to exhaust his administrative remedies.

The Wyoming Supreme Court, applying Wyoming statutes and judicial authority, held that Routh failed to exhaust his available worker's compensation remedies before resort to any judicial proceeding. "In Wyoming, judicial action is withheld until the administrative process has run its course." Pet. at App. 15 (citation omitted).

D. Under the Wyoming Governmental Claims Act, the state and its agencies were immune from Routh's tort claims.

The Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et seq.* (1997), is a limited waiver statute. A plaintiff seeking recovery in tort from an agency of the State of Wyoming must allege conduct that comes within one of the enumerated categories where the state has consented to be sued. *Cooney v. Park County*, 792 P.2d 1287 (Wyo. 1990). The State of Mississippi has retained an even greater measure of immunity. Miss. Ann. Stat. § 11-46-3 (1980).

Nothing in Wyoming's Governmental Claims Act could be construed as a waiver of sovereign immunity for Routh's claims, nor does Routh allege such a waiver. Routh's counsel misled the Mississippi court in this regard; he told the court that there is no Wyoming law regarding sovereign immunity. There is no source of

authority under either Wyoming or Mississippi law for Routh's claims against a state. Although the Wyoming Supreme Court did not address Mississippi law on sovereign immunity, it unequivocally held "the [Wyoming] legislature has chosen not to abrogate sovereign immunity for claims such as this." Pet. at App. 18.

E. Routh did not comply with either the notice requirement or limitations period of the Wyoming Governmental Claims Act.

The Wyoming Supreme Court expressly held that Routh did not file a governmental claim within the two-year limitations period of the Governmental Claims Act. The Court also held that Routh's Mississippi complaint failed to allege the filing of a governmental claim. An allegation of the specific date on which the claim was filed is, under Wyoming law, a jurisdictional prerequisite to any action based on that claim. Pet. at App. 19-20.

II. The decision of the Wyoming Supreme Court does not involve an important federal question and does not conflict with the decisions of this Court.

Routh relies on *Nevada v. Hall*, 440 U.S. 410 (1979), for the broad proposition that a state may not assert its own sovereign immunity when sued in the courts of a sister state. In *Hall*, this Court did not universally abrogate state sovereign immunity. The Court held simply that California law would determine the question of amenability to suit for accidents on California highways, even when the defendants were employees of Nevada

traveling on official business. The judgment against Nevada was in accord with California's Motor Vehicle Code, providing for service of process against non-resident motorists. Routh's Mississippi judgment, by contrast, violated both Wyoming's Governmental Claims Act and Mississippi's long-arm statute. *See, infra,* part IB, D, E.

Wyoming merely sent Workers' Compensation payments to Routh and his health care providers following Routh's unilateral decision to move there. The plaintiff's unilateral activity can never establish the defendant's contact with the forum. *Helicopteros Nacionales de Columbia v. Hall,* 466 U.S. 408 (1984).

In *Crider v. Zurich Ins. Co.,* 380 U.S. 39 (1965), the injured worker filed his action in the state where he resided and received his injury. Likewise, in *Pacific Ins. Co. v. Industrial Acc. Comm'n,* 306 U.S. 493 (1939), a Massachusetts employee was permitted to bring a claim in California for a work injury suffered there.

None of the cases cited by Routh supports the proposition that a worker injured in a state with a state-operated compensation program may abandon his claim there, move to another state, and sue the first state for damages. Routh would manipulate the Full Faith and Credit Clause in a manner that this Court proscribes:

> [W]e think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events. . . . Few matters could

> be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power.

Pacific Ins., 306 U.S. at 502-03.

III. The Court should deny the writ for prudential reasons.

Routh's Petition for Writ of Certiorari seeks a simple redetermination of the facts found by the Wyoming trial court and the Wyoming Supreme Court. He argues that his misrepresentation to a Mississippi judge regarding Wyoming's law on sovereign immunity and the exclusiveness of its workers' compensation remedies should prevail over the pronouncements of the Wyoming Supreme Court on those subjects. Finally, the Petitioner effectively asserts that this Court has already abrogated the states' sovereign immunity. This Court has not done so. Nothing in this case, where a judgment was obtained without conformity to the law of either Wyoming or Mississippi, requires the Court to consider such a dramatic change in the federal relationship among the states.

CONCLUSION

The Court should deny the writ.

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